

DOUGLAS F. GANSLER
Attorney General



KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

September 24, 2008

Linda H. Lamone, Administrator
State Board of Elections
151 West Street, Suite 200
Annapolis MD 21401

Dear Ms. Lamone:

You recently alerted my office about calls received by some local boards of elections expressing concern that persons who have lost their homes to foreclosure will be challenged at the polls when they vote in the upcoming general election. Although there is no evidence that this repugnant practice is being planned for in Maryland, there have been widespread Internet and email rumors that such an effort may occur. Moreover, there are media accounts of such an effort in at least one other state. Thus, to allay any fears, I ask that you instruct all state and local election officials to make clear to voters that persons who lose their homes to foreclosure do not lose their right to vote.

In Maryland, an individual is entitled to vote "in the ward or election district in which he resides..." and retains the right to vote in that location "until he shall have acquired a residence in another election district or ward..." Maryland Const. art I, § 1. A person's residence is determined based on that person's domicile, which is:

[T]he place with which an individual has a settled connection for legal purposes and the place where a person has his true, fixed, permanent home, habitation and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever his is absent, the intention of returning.

Oglesby v. Williams, 372 Md. 360, 372 – 375 (2002)(quoting *Roberts v. Lakin*, 340 Md. 147, 153 (1995)).

The primary factor in determining an individual's domicile is the individual's intent. *Oglesby*, 372 Md. at 373. As this office has previously advised, "Once a person establishes a domicile in one place, there is a presumption that the location remains the

Ms. Linda H. Lamone
September 24, 2008
Page Two

person's domicile unless there is affirmative evidence demonstrating that the individual has abandoned the established domicile and adopted a new one." 89 Op. Atty. Gen. 166, 169 (2004). The constitutional provision on where a person is to vote incorporates that presumption. Maryland Const. art. I, §1 (person entitled to vote in district of residence "until he shall have acquired a [new] residence"). In order for an individual to adopt a new domicile, there must be "an actual removal to another habitation, coupled with an intention." *Oglesby*, 372 Md. at 374.

With respect to an individual's intent regarding domicile, the person must intend to both (1) abandon the former domicile and (2) adopt another location as his or her new domicile. *Id.* at 375. In several cases addressing domicile, the Court of Appeals required clear evidence that the individual had abandoned an established domicile and adopted a new one during the relevant time period. *See Oglesby*, 372 Md. 360; *Stevenson v. Steele*, 352 Md. 60 (1998); *Blount v. Boston*, 351 Md. 360 (1998). Accordingly, persons who have received a foreclosure notice or whose homes have been foreclosed have not necessarily changed their domicile.

Moreover, a foreclosure list is not a valid basis on which to challenge a registered voter at the polls. Under state law, a voter may only be challenged on the basis of identity; that is, on the claim that the voter is not who he or she claims to be. EL § 10-312. Thus, a person cannot challenge a voter at the polls on the ground that the voter has moved, or that the person is homeless. *See* 69 Op. Atty. Gen. 138 (1984)(homeless persons may register to vote if they maintain a fixed domicile).

I thank your office for bringing the matter to my attention. Should anyone have information that persons are challenging the right of persons whose homes have been foreclosed to vote, I ask that they contact my office immediately. Both the federal and State constitutions guarantee citizens the right to vote. The strength of our democratic system depends on ensuring that all citizens entitled to vote may do so. Public confidence in the election process cannot be maintained if voters are impeded from exercising their right to vote by intimidation, misinformation or deceit.

Sincerely,

A handwritten signature in black ink, reading "Douglas F. Gansler". The signature is written in a cursive, flowing style.

Douglas F. Gansler

cc: Local Election Board Directors